

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 15

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID A. LLOYD, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, David A. Lloyd ("Lloyd" or "Defendant"), was admitted to the North Carolina State Bar on August 18, 1990, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Lloyd was engaged in the practice of law in the State of North Carolina and maintained a law office in Rutherford County, North Carolina.

FIRST CLAIM FOR RELIEF

4. From 2000 through May 31, 2010, Defendant practiced law with the firm Hamrick, Bowen, Mebane & Lloyd, LLP ("HBML") in Rutherford County, North Carolina. Defendant left HBML effective May 31, 2010.
5. During the time Defendant was a member of HBML, Robert L. Mebane ("Mebane") was also a member of the law firm.

6. Beginning in 2008 through May 31, 2010, Defendant and Mebane were the only members of HBML.

7. In 2008 through May 31, 2010, HBML had two trust accounts: a) a real estate trust account with RBC Centura, account number ending 1230 ("RBC 1230"); and, b) a general trust account with BB&T, account number ending 1837 ("BB&T 1837").

8. In 2008 through May 31, 2010, Defendant had signature authority on BB&T 1837 and entrusted funds belonging to clients of Defendant and Mebane were held in the account during that time period.

9. During the period 2008 through May 31, 2010, Defendant did not conduct monthly or quarterly reconciliations of BB&T 1837, and Defendant did not know whether any such reconciliations of the account were conducted by anyone associated with HBML.

10. In 2008 through May 31, 2010, Defendant and Mebane shared expenses of HBML.

11. Defendant knew that beginning in or about 2008, HBML no longer maintained an operating account and that firm operating expenses were thereafter paid from BB&T 1837.

12. Between 2008 and May 31, 2010, client trust funds and personal funds of Defendant and Mebane were deposited to and held in BB&T 1837.

13. On December 17, 2009, with Defendant's knowledge and consent, check no. 21565 drawn on BB&T 1837 in the amount of \$173.10 was paid through the trust account. The check was made payable to a restaurant to pay for a staff holiday luncheon.

14. At the time check no. 21565 was drawn against BB&T 1837, HBML did not have sufficient funds belonging to HBML in the account to cover the amount of the check. Entrusted funds were used to pay for the staff luncheon.

15. On December 21, 2009, personal funds belonging to Defendant were deposited to replenish BB&T 1837 for his part of the costs of the holiday luncheon.

16. Between October 1, 2008 and May 31, 2010, Defendant signed checks on BB&T 1837 without identifying on the checks the client balance against which the checks were drawn.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By using entrusted funds to pay for HMBL's staff holiday luncheon, Defendant used entrusted property for his own use and the benefit of third

parties other than the owners of that property in violation of Rule 1.15-2(j), committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

- (b) By failing to conduct quarterly and monthly reconciliations of BB&T 1837, Defendant violated Rule 1.15-3(d)(1) and Rule 1.15-3(d)(2);
- (c) By depositing funds belonging to Defendant into BB&T 1837 to cover the check written on BB&T 1837 for the staff luncheon, Defendant commingled personal and entrusted funds in violation of Rule 1.15-2(f); and
- (d) By issuing checks on BB&T 1837 without identifying on the checks the client balance against which the checks were drawn, Defendant violated Rule 1.15-3(b)(2).

SECOND CLAIM FOR RELIEF

17. Paragraphs 1 – 16 are re-alleged and incorporated as if fully set out herein.

18. In the fall of 2008, Defendant learned HBML had not met its obligations to pay federal income tax withholding for its employees for the first three quarters of 2008.

19. On or about November 10, 2008, Defendant signed and issued check no. 21176 in the amount of \$13,437.03 drawn against BB&T 1837 and made payable to the Internal Revenue Service (hereinafter “IRS”) for overdue income tax withholding.

20. On November 18, 2008, when check no. 21176 cleared BB&T 1837, HBML did not have sufficient funds belonging to HBML in the account to cover the check.

21. On November 26, 2008, Defendant deposited \$13,437.03 of his personal funds into BB&T 1837 to cover check no. 21176.

22. Defendant used entrusted client funds to cover check no. 21176 and pay HBML’s withholding tax obligation.

THEREFORE, Plaintiff alleges that Defendant’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By using entrusted funds to pay HBML’s withholding tax obligation, Defendant used entrusted funds for his own benefit and for the benefit of third parties other than the beneficial owners of that property in violation

of Rule 1.15-2(j), committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

- (b) By depositing funds belonging to Defendant into BB&T 1837 to cover check no. 21176 and pay HBML's withholding tax obligation, Defendant commingled personal and entrusted funds in BB&T 1837 in violation of Rule 1.15-2(f).

THIRD CLAIM FOR RELIEF

23. Paragraphs 1 – 22 are re-alleged and incorporated as if fully set out herein.

24. On or about June 2, 2009, Defendant deposited \$95,270.69 to BB&T 1837. These were entrusted funds of the K.N. Estate held on behalf of Defendant's client, R.H. ("RH"), which had been named administrator of the K.N. Estate.

25. After Defendant deposited the entrusted funds of the K.N. Estate to BB&T 1837, he withdrew attorney fees from the estate funds on two occasions so that as of August 17, 2009, \$94,070.69 of the K.N. Estate entrusted funds remained to be disbursed.

26. In or about March or April 2010, an employee of HMBL told Defendant she suspected Mebane had misappropriated money from BB&T 1837.

27. As a result of the employee's information, Defendant looked into Mebane's disbursements from BB&T 1837. After examining BB&T 1837, Defendant confronted Mebane about checks drawn on the trust account by Mebane that Defendant deemed suspicious.

28. Between the time Defendant confronted Mebane and May 31, 2010, Mebane told Defendant he (Mebane) had replenished BB&T 1837 for everything Mebane had taken out of the trust account.

29. By late May 2010, Defendant knew and had information to reasonably believe that Mebane had misappropriated or misapplied entrusted funds from BB&T 1837.

30. On many days between August 17, 2009 and May 31, 2010, the balance of BB&T 1837 dropped well below \$94,070.69, the amount of entrusted funds of the K.N. Estate that should have been in BB&T 1837.

31. With information to know and reasonably believe that Mebane had misappropriated or misapplied entrusted funds from BB&T 1837, Defendant did not inform the North Carolina State Bar about Mebane's conduct.

32. After Defendant separated from HBML on May 31, 2010, Defendant left the K.N. Estate entrusted funds for which RH was Administrator in BB&T 1837 even though Defendant had information to reasonably believe that Mebane had misappropriated or misapplied entrusted funds from BB&T 1837 and that Mebane had signature authority on BB&T 1837.

33. On October 21, 2010, Defendant wrote the following checks against BB&T 1837 to disburse K.N. Estate funds as follows:

| Date | Check No. | Payee | Amount |
|----------|-----------|-----------------|-------------|
| 10/21/10 | 21729 | R Radiology | \$1,570.73 |
| 10/21/10 | 21730 | BB&T | \$5,955.28 |
| 10/21/10 | 21731 | R Internal Med. | \$3,678.75 |
| 10/21/10 | 21732 | B Center | \$365.27 |
| 10/21/10 | 21733 | RH | \$71,340.32 |
| 10/21/10 | 21734 | Clerk/Court | \$10,610.22 |
| 10/21/10 | 21735 | Clerk/Court | \$550.12 |

34. Defendant later sent the checks listed in paragraph 33 to the persons and/or entities named on the checks.

35. Defendant was later notified by RH that its check in the amount of \$71,340.32 had been returned for insufficient funds.

36. Mebane was later disbarred.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional conduct in effect at the time of his actions as follows:

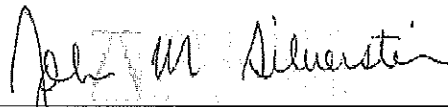
- (a) By failing to inform the North Carolina State Bar or a court having jurisdiction that Defendant knew Mebane had misappropriated entrusted funds thereby committing a violation of the Rules of Professional Conduct that raised substantial questions as to Mebane's honesty, trustworthiness or fitness as a lawyer, Defendant violated Rule 8.3;
- (b) By failing to promptly report Mebane's conduct to the North Carolina State Bar after Defendant discovered or had grounds to reasonably believe Mebane had misappropriated or misapplied entrusted property, Defendant violated Rule 1.15-2(o);

- (c) By leaving the K.N. Estate entrusted funds in BB&T 1837 after Defendant separated from HBML knowing or having grounds to reasonably believe Mebane had misappropriated or misapplied entrusted property, and that Mebane had signature authority on the account, Defendant failed to act with reasonable diligence to protect the K.N. Estate's interests in violation of Rule 1.3; and failed to safeguard entrusted funds in violation of Rule 1.15-2(a).

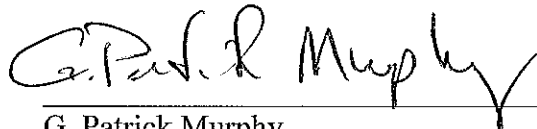
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 17th day of April, 2014.



John Silverstein, Chair
Grievance Committee



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